

**RUMSON PLANNING BOARD
REGULAR MEETING
APRIL 9, 2007
MINUTES**

Chairman Parton called the meeting to order at 7:30 p.m. with the Pledge of Allegiance. The requirements of the Open Public Meetings Act were stated as met. The roll was called, with the following members present: Parton, Rubin, Shanley, Emery, Vaughan, Hewitt. Also present: Bonnie Heard (T&M Assoc.), Michael Steib (Board Attorney), Fred Andre (Zoning Officer), Karen St. George (State Shorthand).

Approval of Minutes

Mr. Emery moved to approve the minutes from the March meeting, and Mr. Shanley seconded. Voice Vote: Ayes, unanimous.

Resolutions

1. Broadmoor Realty Assoc., LLC

Mr. Steib reviewed that the applicant has requested an extension of the time limit for this approval. The Board approved the extension; however, prior to drafting the resolution, a decision was heard from Judge Lawson that the Board correctly stated the time for approval through the litigation of March of this year, based on the tolling provisions, which extend to March, 2007. The preliminary resolution deleted the reference to extensions due to the technicality in the law. Councilman Rubin moved to approve the resolution as amended. Mr. Vaughan seconded.

Roll Call Vote: Ayes – (Eligible) Parton, Emery, Shanley, Rubin, Vaughan
Nays – None

Dennis & Suzanne Shea, 31 Highland Ave.

Brooks Von Arx, attorney, appeared on behalf of the applicants and explained that they are requesting a one-year extension for their two-lot minor subdivision approval, received in 2005. After the resolution was adopted on 2/7/05, the Shea's applied to CAFRA for approval of the two lots, since the property fronts on a branch of the Navesink River. One of the lots received approval in June, 2005, but the other lot was eventually denied, leading to a remediation procedure before the DEP. No action occurred at the DEP level, and as of February, 2007, no DEP approval had been received.

Mr. Shea was sworn in and confirmed Mr. Von Arx' explanation of what has occurred since their application before the Board. As of February, 2007, Mr. Shea was advised that additional copies of an updated survey were requested by the DEP, and these were submitted. He received an email from the DEP stating that they should have their decision by the end of April. They have been unable to resume their project until these approvals are received.

Mr. Von Arx thinks this case falls within the parameters of the statute, and he asked for a one-year extension from the date of approval to 2/7/08. Mr. Steib stated that the statute can grant up to a one-year extension if they are prevented from getting governmental approval, and unless there has been a change to the zoning ordinance, he thinks it would be appropriate to grant the extension. Ms. Heard stated that the only change is for the setback requirements, and Mr. Von Arx noted that the design of the Shea's new home was done to meet the ordinances from 2005. The Storm Water ordinance must still be complied with, according to Ms. Heard. There were no questions or comments from the public. Mr. Vaughan asked why the one lot was not approved, and Mr. Von Arx noted that different procedures were applied. Mr. Vaughan moved to grant the one-year extension, and Councilman Rubin seconded.

Roll Call Vote: Ayes – Parton, Emery, Shanley, Rubin, Vaughan, Hewitt
Nays – None

Broadmoor Realty Assoc., LLC

John Giunco, attorney, appeared on behalf of the applicant and explained that there are two issues they would like to address:

2. Height of the bulkhead
3. Approval of DEP plan

He noted that the DEP requirement for the bulkhead was 9', and the approved height was slightly less, although the approval was to comply with the DEP. With regard to utilities along the driveway, Mr. Giunco explained that the utilities would be installed in compliance with the borough engineer's assessment.

It was noted that Mr. Hewitt is eligible to vote on this matter, as he has listened to the tapes from the last meeting.

Ms. Heard agrees with Mr. Giunco's summary. The 8.68' approved bulkhead height was pulled from the engineer's letter, although they agree that the plan was to comply with the DEP requirement. The conduit bulkhead was approved by T&M, and they agree that this style will do the job. Mrs. Parton suggested that the Board allow for a bulkhead material that is approved by T&M, instead of saying exactly what the material should be. This was agreeable to Mr. Giunco.

No questions or comments were heard from the public. Mr. Steib stated that he reviewed the transcript, which appear to be consistent with the recollections of Ms. Heard and Mr. Giunco that the Board intended to approve the DEP requirement.

Mr. Emery moved to approve the recommended change, which is in agreement with the DEP guidelines of a 9.0' height for the bulkhead, with materials to be consistent with those approved by T&M Assoc. Mr. Vaughan seconded.

Roll Call Vote: Ayes – Parton, Emery, Shanley, Rubin, Vaughan, Hewitt
Nays – None

Motion carried.

Mr. Giunco stated that all maps were ready to be filed, and all fees have been paid. Also, during the course of litigation, the issue of the identity of the objectors arose, and his client would like to know who these objectors are. He thinks the Board should make a decision and provide a schedule of the neighbors who took part in the litigation. He referred to a court rule that they should be able to know who the litigators are. Mr. Steib advised that this is discretionary on the part of the Board. The opposition is not appealing at this time, and the attorney for the objectors is not present this evening or asking anything from the Board. Councilman Rubin would object to releasing the names of objectors. Chairman Parton agrees and thinks it would not serve any purpose at this time. Mr. Giunco disagrees and thinks his client has the right to know this out of fairness and reciprocity. He reviewed the concessions already made by his client, and he thinks he is entitled to know who the people are.

Mr. Vaughan asked why this issue was not raised early on, and Mr. Giunco stated they did request this earlier, but it never came to conclusion by the Board. Also, Mr. Vaughan asked about potential improper

motives of people involved in this objection. He thinks if they are residents of Rumson, they would have a right to participate. Mr. Giunco stated they are not against this, but his client would like to know who they are. Mr. Emery, Mr. Shanley, and Mr. Hewitt agree that this information should not be provided. Mr. Vaughan thinks it could be fair, if there were further appeal, to allow the names to be divulged.

Councilman Rubin moved to deny this request at this time. Mr. Emery seconded.

Roll Call Vote: Ayes – Parton, Emery, Shanley, Rubin, Vaughan, Hewitt

Nays – None

Motion carried.

Mr. Vaughan thinks if the objectors show up again with Mr. Gaziorowski representing them, they should disclose their members.

Sea Bright Lawn and Tennis Club

Chairman Parton announced that Mr. Hewitt is eligible to vote on this application, as he has listened to the tapes from their last appearance.

Mr. Steib listed the exhibits received since the last meeting:

- A-5 – Preliminary approval letter from T&M Assoc.;
- A-6 – Revised site plan, dated 2/16/07, and revised 3/26/07;
- A-7 – Revised architectural elevations, dated 3/20/07;
- A-8 – Foundation planting schedule, dated 4/2007.

Ms. Heard stated that the revised plans were reviewed by T&M Assoc., and a new letter was sent on 4/6/07, which she proceeded to review:

- Revised setbacks not shown in building schedule;
- Clarification of proposed floor area needs to be shown;
- Zone schedule and lot circle requirement needs to be shown on plan;
- Height of club house building not shown;
- Clarification on parking;
- Setbacks for caretaker's house need to comply with principal structure setbacks, because of the size;
- New plans show a basement, which needs a variance;
- Accessory structure cannot have a second story that is more than one half of ground floor area;
- Cannot use accessory structure as residence;
- Height of cottage requires a variance (29' proposed/24' existing);
- Sketch of landscape plan not signed by landscape architect;
- Buffer requirement not addressed;
- Revised plan to show minimum setback lines;
- Additional information needed for zoning schedule;
- List of variances and design waivers not included;
- Confirmation of date of latest property survey;
- Existing trees to be shown;
- Location of existing utilities not shown;
- Grading plan required;
- Storm water regulations need to comply;
- Information as to any proposed modifications to existing driveway;
- Information as to lighting;
- Plans need to show trash enclosure proposal;

- Conditions of approval as noted at the last meeting to be added to plan;
- Requirements of Monmouth County Planning Board and Freehold Soil Conservation;
- Fees shown as paid;
- Notation of any and all permits that would be required.

Ms. Heard suggested highlighting things which are administerial and those which are substantial.

Mr. Sorenson, applicant's attorney, stated he only received this letter this morning. He noted that testimony was heard previously as to the description of the house, and their planner was present this evening to answer questions.

Tom Santry, Jr., project engineer, was also present and was sworn for testimony. He has reviewed the list from T&M. He noted that they have addressed some of the things on the list and provided a copy of the revised plan for the Board's review. The exhibit was marked A-9, dated 2/16/07 and revised 4/6/07. He reviewed this plan:

- Side yard setback lines are shown as required, as well as the circle requirement;
- Zoning schedule was revised to reflect Item #2 on the T&M letter. They agree with all requirements for setbacks and floor area;
- The height of the existing club house is 31.3'. An accessory building can be up to 24', and they are asking for a 29' high structure, 2 ½ stories, also requiring a variance;
- Parking for the club will not change, and the new house will not require any additional parking. There are no garages in the existing house, and they are proposing a two-car garage with their new plan;
- The landscape plan was done by Mr. Sorenson's sister, who is an experienced landscape person, but not a licensed landscape architect;
- The survey has been certified;
- All existing utilities could be shown as a condition for approval. Whatever is currently on the property will stay and not change;
- No modifications are proposed for the asphalt driveway;
- The trash and recycling will reflect whatever the Board requires;
- All Monmouth County permits will be requested;
- Any damage to the roads, curbs, etc., would be replaced. Ms. Heard noted that most of the construction will be on the interior of the site;
- They expect a letter of "no interest" from the Monmouth County Planning Board, and they will provide this to Ms. Heard;
- Letters from the Freehold Soil Conservation Dept. will be supplied.

Mr. Emery has a problem with the plans not being farther along before they were brought back before the Board. Chairman Parton noted that the Board listened last month as a courtesy, even though the application was very incomplete. She suggested the Board could give them some guidance and then have them come back next month with complete plans. Mr. Sorenson thinks they now have a complete plan. He would like to have their planner testify this evening. He asked if the Board could approve the landscape plan, and Chairman Parton noted it does not comply with the zoning ordinance.

At this time, Jeremy Lange, their professional planner, was sworn in, and the Board accepted his qualifications. He has reviewed the plans and examined the review letter from T&M Assoc. He commented on the positive and negative criteria for this plan:

1. Increase in accessory structure floor area – He noted that a variance was granted in July, 2004, when they increased the size of the cottage. He thinks this new increase is diminimus, representing a minute area;
2. Setbacks – 15.5' are proposed from the side and rear property lines. Accessory structure requirements are normally 15', although the size of the lot requires a larger side yard, which is a technical requirement;
3. Existing setbacks were mentioned, with Mr. Lange explaining that they are improving this condition with their plan;
4. Accessory Use – Mr. Lange stated that this dwelling is a permitted use and could be 35' tall. It is a structure that has been a part of the club for some time and is a customary accessory use permitted under the ordinance. He noted that a mold conditions exists and needs to be remedied. This building provides security for the lot. The dwelling will be more aesthetically pleasing and the setbacks will be increased.

Positive criteria exist in that these improvements will have a positive impact on the environment. It is his conclusion that no substantial detriment will occur to the town, the ordinance, or the public with this plan. It was also his opinion that the house, looming over the club and church, is an existing condition, which will be improved over what exists today by moving it farther from the property line and improving the landscaping. The height will be different, but farther back from the property line. The total increase in square footage is about 500 sq. ft., plus the basement.

Ken Murphy, Vice President of the club, explained that they proposed a basement for additional storage space, but this is not a big issue for them and could be eliminated, if required. Mr. Vaughan stated he would be in favor of a basement, since it can provide an area for utilities away from the living space.

Mr. Sorenson noted that the setback requirement for accessory buildings in the R-2 Zone is 15'. Mr. Emery suggested providing the required setback for the house would make the plan more amenable, as it is being treated as a house in every way, except for the setbacks. Mr. Sorenson stated that this would interfere with the primary use of the tennis club.

Doug Rossbach, President of the tennis club, explained that bringing the setback in farther would compete with the space of the tennis club. He noted that the house will fit in with the appearance of the club, and the new building will be much nicer than what exists today. Mr. Emery asked him to locate the tennis courts on the plan, as they pertain to the house. There is approximately 15' from the house to the proposed fence. The buffer would go along the church boundary. Mr. Rossbach explained that the main buffer today is a privet hedge, which they propose to leave in place between their property and the church.

Mr. Shanley asked what the distance was from the front of the house to the first tennis court path. He thinks there seems to be a great distance between this house and the tennis court, and relocating the driveway could provide more distance to move the house over. Mr. Rossbach stated that the driveway is the only access to the rear of this property and goes along the tennis court.

Chairman Parton asked if the house could be built with less room on the second floor, possibly less than the 75% of the first floor area, as proposed. Mr. Rossbach stated that the existing house is almost the same size as what is proposed. He thinks their plan will appear less intrusive than what is there today. Chairman Parton stated that the Board is trying to make it the most aesthetically pleasing, yet practical use

of the building, which is a large house. The house they saw last month did not get smaller, and now also proposes a basement. She thinks they could make the second floor somewhat smaller. She noted that there are a number of variances included, and there could be some ways to work with the Board.

Mr. Vaughan again stated his opinion that the basement is a good idea for storage, etc. An accessory structure which is really a bonafide residence presents a problem. He likes the design but thinks it might be better if made to look more like a carriage house than a principal residence.

Mr. Hewitt thinks there seems to be room to provide larger setbacks from the property line.

Mr. Shanley thinks it is a big house that is too close to the fence. He thinks the new house will be more appealing, but it is too big for this spot.

Father Manning, from Holy Cross Church, asked how they will determine whether this is an accessory structure or a home and what the dimensions and distances were from the fence. Mr. Steib stated that the structure is larger than what is permitted, and the Board needs to determine if it is appropriate or not and whether the applicant has met the burden of presenting the positive and negative criteria. Father Manning questioned the history of the property, and Chairman Parton stated she did not think this has bearing on the situation, as the residence already exists, and the Planning Board needs to figure out the best way to allow it to exist as a residence while dealing with the problem of having it be potentially uninhabitable, due to the mold problem.

Mr. Vaughan recalled that the church was supposed to get together with the club to try and work out the buffering situation, along with other issues. Mr. Sorenson stated that a member of the tennis club spoke to Father Manning. Father Manning was sworn in at this time and related his conversation with the tennis club regarding relief for the church on their side of the fence. Ms. Heard noted that the Planning Board cannot change or grant relief from a requirement set forth by the Zoning Board of Adjustment.

Chairman Parton stated that the buffering requirement for the church does not have anything to do with this application; however, Father Manning disagreed. Ms. Heard stated that the Zoning Board would be the one that would grant the relief. The buffer required of the church was an ordinance requirement.

Father Manning stated they did not discuss this house or the landscaping on the tennis club side. He has not seen any plans as yet regarding this issue. Mr. Murphy noted that they agreed to move the house 15' from the property line, and this was presented at the last meeting. Father Manning expressed his concerns and objections regarding both the house and the issues of the buffering. He reviewed the requirements the church was made to comply with when they presented their building plans, based on objections and requests from the tennis club. Chairman Parton noted that their buffer requirement did not pertain to this issue.

Mr. Sorenson reviewed their situation, noting that the carriage house was purchased by the tennis club in the 1960's to be a caretaker's cottage, and it has been in this capacity ever since. It is an old structure and grandfathered in as to setbacks. There is a landscape buffer on the church side of the fence, which is maintained by the tennis club. They have provided a proposed landscaping plan around the house that will be on the other side of the large arborvitaes that provide a solid evergreen buffer. There have never

been barrier plants around the tennis club, and no neighbors have ever asked for them. They felt building the house from scratch would resolve their problem, and they think it will be better for the town and the neighbors. It will be shingle-style design, which conforms to the neighborhood.

Chairman Parton reviewed that the Planning Board would like the tennis club to redo the plan to answer items that are not included in their current plan and also look at decreasing the size of the second floor and height of the building and see that it is moved back as far as possible from the side line. She commented that the 15' setback proposed is an improvement over what exists. She noted that the current house is not a carriage house, but it is a very large building and should be put back to a style that is more in keeping with a caretaker's, carriage-house style.

Mr. Vaughan again stated that he would be in favor of the basement, but agrees that more of a carriage-house design would be preferable.

Mr. Emery agrees that it should be put back a bit farther from the property line. He thought the two-car garage was acceptable.

Mr. Shanley thinks the height of the building is very important.

(Mr. Emery left the meeting at this time – 9:20 p.m.)

The application will be carried to the May 7th meeting, with no further notice required. The applicants will meet with the church before that meeting, and any new plans will be submitted at least ten days before that date.

Ordinance Committee Report

Chairman Parton reviewed that the Ordinance Committee met on March 26th to discuss definition revisions (Members: Chairman Parton, Councilman Rubin, Messrs. Shanley and Emery). Ms. Heard explained that the Administration Dept. is in the process of updating the ordinance book, so that it can be put on line. They want to go through the ordinances to eliminate inconsistencies and provide accurate information. She reported on recommended changes, including wording, procedures, fees, etc. These changes were outlined in a memo and given to the Ordinance Committee. Some items raised need to be further discussed. Chairman Parton stated that the Planning Board needed to take a vote regarding their proposed recommendations, which will be then sent to Mayor and Council. Mr. Vaughan moved to approve the proposed recommendations, and Mr. Hewitt seconded.

Roll Call Vote: Ayes – Parton, Shanley, Rubin, Vaughan, Hewitt

Nays – None

Motion carried.

Ms. Heard reported on the issue of the definition of building coverage, which now includes eaves, which causes a problem in that builders have been eliminating the eaves to increase the allowed building coverage. She included a note for the members with a suggesting that a bonus be given if eaves are provided (one half to be excluded in the building coverage calculation for 24" eaves projecting into the setback line). This will be discussed in the future, and she would like the Board to keep it under consideration. Chairman Parton noted that if the rule were 12", it would add 100 sq. ft. and 18" would add 150 sq. ft. If this does not accomplish what the Board is trying to achieve, they can always go larger. This rule would mainly apply in the smaller zones.

Mr. Vaughan thinks the 24" rule would be a better incentive for builders and provide a better architectural design. Most members agreed. Mr. Andre noted that the setback would still be to the building. A clarification was suggested by Mr. Steib, and this will be included in their wording.

Ms. Heard reported that another issue arose regarding zoning suggestions for larger lots. This issue has been tabled by Mayor and Council in the past due to opposition raised by the public, and she asked if the Board wanted to again recommend zoning changes to Mayor and Council for these zones. Copies of the Re-examination Report were given to the members, and the question will be if the Board wants to move forward with this issue or leave it the way it is. Mayor and Council would like to revisit the issue area by area. The issue will be addressed again at a future meeting. Any new ordinances the Board would like to discuss should also be brought to the attention of the committee members.

The issue of fire places, chimenarias, and portable kitchens was discussed, and Chairman Parton asked what limits they could include in the ordinance, especially as it refers to clean air, which is regulated by the state and whether Rumson could impose additional regulations. Mr. Steib did not know if the state rules would preempt a municipal law. He would need to investigate this issue. The fact that they are not permanent might prohibit zoning of these structures. The Board will further discuss this at the May meeting and determine the next committee meeting date at that time.

Other Business

At this time, Mr. Steib reported on the decision of Judge Lawson, which affirmed the Board's granting a tolling of the time provisions based on the fact that the filing of an action by Widgeon Point Assoc. prevented **Broadmoor Properties** from finalizing its approvals. The Board had granted an extension of approvals; however, a provision states that when they are dealing with a subdivision, an extension can be granted if the subdivision has been perfected, which has not occurred in this case, and the extension would not apply. The approval never started to run, due to the tolling, and the approval carried with it a period of repose for two years. The approval is staid until litigation ends. No extension would be needed until 2009, in this case.

Mr. Steib reported that a trial is scheduled for April 20th regarding the property of **James & Madelyn Hunt, 19 Rosalie Ave.**, and the Hunt's have filed their brief. Mr. Steib could not compose his brief, as he was not provided with the transcript, and he has an extension until the end of this week, provided he receives the transcript as promised.

There being no further business, motion was made and seconded to adjourn. Voice Vote: Ayes, unanimous. The meeting was adjourned at 10:00 p.m.

The next meeting: May 7, 2007.

Respectfully submitted,

Patricia Murphy